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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,993	07/03/2007	Alan Henry Benke	70440/UST	3029
26748	7590	03/20/2009	EXAMINER	
SYNGENTA CROP PROTECTION , INC.			NWAONICHA, CHUKWUMA O	
PATENT AND TRADEMARK DEPARTMENT				
410 SWING ROAD			ART UNIT	PAPER NUMBER
GREENSBORO, NC 27409			1621	
			NOTIFICATION DATE	DELIVERY MODE
			03/20/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

department-gso.patent@syngenta.com

Office Action Summary	Application No.	Applicant(s)
	10/598,993	BENKE ET AL.
	Examiner	Art Unit
	CHUKWUMA O. NWAONICHA	1621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 14 October 2008.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-8 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-8 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION

Current Status

1. This action is responsive to Applicants' amendment of 14 October 2008.
2. Receipt and entry of Applicants' amendment is acknowledged.
3. Claims 1-8 are pending.
4. The obviousness-type double patenting rejection of claims 1-8 as being unpatentable over claims 1-5 of copending Application No. 10/573,723 is maintained for the reasons stated in the previous Office Action dated 04/14/2008.
5. The rejection of claims 1-8 under 35 U.S.C. 103 as being unpatentable over Javdani et al., {US 7,285,678, same as WO 2002076934} or Ueda et al., {US 4,937,386} for the reasons set forth in the previous Office Action of 04/14/2008 is maintained.

Applicants' argument and amendments filed 14 October 2008 have been fully considered but they are not persuasive because Applicants claimed process is obvious in view of the prior art references cited. Applicants' argument is based on the fact that the levels of undesirable impurities (**cyanide levels, an undesirable impurity**) in the mesotrione sample as claimed differ from that of the prior art references cited. However, as noted by the Examiner, there is nothing on the record that clearly teaches that the levels of undesirable impurities in the product sample of Javdani et al. and Ueda et al. is different from the levels of undesirable impurities in Applicants sample. Applicants may provide a side-by-side comparison of their process and that of the prior arts process. The submission of this data possibly would make Applicants' argument

more convincing. It should be noted that merely modifying the process conditions is not a patentable modification **absent** a showing of criticality. *In re Aller*, 220 F. 2d 454, 105 U. S. P. Q. 233 (C. C. P. A. 1955).

Additionally, Applicants argue that the purification process of the presently claimed invention requires an aqueous solution of a mesotrione sample - then adjusting the pH to 9.5 or higher- then crystallisation of the mesotrione, that neither Javdani nor Ueda disclose or suggest removal of cyanide residues from mesotrione in the manner specified by the present claims. Applicants' argument is not convincing because the references cited teach purification methods according to the instant claims. Therefore, one of ordinary skill in the art would have a reasonable expectation of success in purifying mesotrione sample by evaluating different purification techniques in chemistry to produce a product sample of low level of impurities.

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chukwuma O. Nwaonicha whose telephone number is 571-272-2908. The examiner can normally be reached on Monday thru Friday, 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Sullivan can be reached on 571-272-0779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Chukwuma O. Nwaonicha/
Examiner, Art Unit 1621

/Jafar Parsa/
Primary Examiner, Art Unit 1621